



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

JRE
Docket No: 3383-00
21 November 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you were released from active duty on 3 April 1993, and transferred to the Temporary Disability Retired List (TDRL), with a combined disability rating of 40%, for chronic intermittent wrist pain (10%), adjustment disorder with mixed emotional features (30%), and non-psychotic mental disorder (10%). The Physical Evaluation Board (PEB) identified five additional conditions from which you suffered at that time, but determined that none was separately unfitting or ratable. The Department of Veterans Affairs (VA) awarded you ratings of 10% for irritable bowel syndrome, left and right carpal tunnel syndrome, organic brain syndrome with adjustment disorder, and lumbosacral strain, effective from 4 April 1992. The VA added a 30% rating for sinusitis effective 7 September 1993. The rating for the mental disorder was increased to 30% effective 25 October 1999. The combined VA ratings were 40% from 4 April 1992, 60% from 7 September 1993, and 70% from 25 October 1999. On 23 September 1994, the PEB made preliminary findings that your chronic intermittent bilateral wrist pain and the unspecified non-psychotic mental disorder were each ratable at 10%, for a combined rating of 20%. The remaining conditions were not considered separately unfitting or ratable. The previously rated adjustment disorder

was classified as "completely resolved", and it was not rated. You rejected those findings and demanded a formal hearing; however, you subsequently indicated that although you did not agree with the findings, you would accept them and withdraw your demand for a hearing. You indicated that you thought the hearing would be fruitless unless you hired civilian counsel, which you could not afford to do. On 15 February 1995, the President, PEB, directed that you be discharged with entitlement to disability severance pay.

The Board was not persuaded that you remained unfit for duty because of an adjustment disorder when reevaluated by the PEB in 1993, that you were entitled to higher ratings for your wrist pain or non-psychotic mental disorder, or that you suffered from any other ratable conditions. It concluded that the conditions rated by the PEB were productive of only minimal to mild impairment, and that the adjustment disorder had resolved and was no longer ratable. The fact that the VA gave you ratings for numerous other conditions was not considered probative or error or injustice. In this regard, it noted that the VA must rate all conditions it classifies as service connected, i.e., incurred in or aggravated by military service, without regard to the issue of fitness for military duty. The military departments, however, are permitted to rate only those conditions which render a service member unfit for duty, or which contribute to an unfitting condition and warrant a separate rating. The Board was unable to conclude that your disequilibrium, coccygeal fracture, functional bowel syndrome, or chronic sinusitis with rhinitis met the criteria for a rating by the PEB.

As the matter of the garnishment of your VA compensation is not within the purview of the Board, it made no determination on that aspect of your request.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director